

FILED

2 office of the Clerk, U.S. District Court
3 NORTHERN DISTRICT OF CALIFORNIA
4 450 Golden Gate Avenue
5 San Francisco, CA 94102
6

08 MAR 19 PM 1:59
March 15, 2008
RICHARD W. WICKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

7 United States District Court
8 For the Northern District of California
9

10 Victor Daniel Sottoro,) Case No. C07-4256 PJH (PR)
11 Plaintiff,) REQUEST FOR 42 USC § 1983
12 v.) FORM AND INSTRUCTION(S), OF
13 Jos McGrath et al.) COMPLAINT UNDER THE CIVIL
14) RIGHTS ACT.
15)
16)

17
18 PLEASE TAKE NOTICE THAT THE ABOVE NAMED PLAINTIFF
19 REQUESTS FORMS AND INSTRUCTIONS(S), OF COMPLAINT UNDER
20 THE THE CIVIL RIGHTS ACT, 42 USC § 1983, TO BE
21 forward to the Plaintiff at the above-entitled
22 address on the date to be prescribed by the
23 court, in the District of the above-entitled Court.
24

25 Plaintiff seeks 42 USC 1983 forms) to comply
26 with Court Order, "Complaint with leave to Amend",
27 dated March 10, 2008 of this Case.
28

1 The 42 USC § 1983 form(s) provided here at
2 the institution Law Library hinder and sabotage
3 the Plaintiff's access to the Court, because it is
4 disabling the Plaintiff from meeting the Court's
5 requirements.

6
7 Not only is/are the form(s) provided here at the
8 institution out dated, from page 2 forward it is an
9 petition. See inclosed Exhibit "A", (the forms prov-
10 ide here to the High Desert State Prison inmates
11 in Administrative Segregation 'D' units). Petitioner
12 is unaware if this is intentional or unintentional,
13 only that it is factual.

14
15 In light of the above-noted information, the
16 Plaintiff requests an extention of time to
17 prepare the 'Complaint with leave to Amend', with
18 designated time to amend to commence upon
19 the forwarding of the requested form(s) to meet
20 the requirements of the order.

21
22 I declare under penalty of perjury that the
23 foregoing is true and correct to the best of my
24 knowledge.

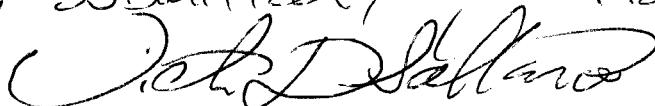
25 Respectfully Submitted, March 15 2008
26 
27 Victor Daniel Soltero
28 (G:\PRO-SE\PJH\CR.07\SOLTERO4256.DWLTA.wpd)

EXHIBIT "A"

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

**Instructions for Filing a Complaint by a Prisoner
Under the Civil Rights Act, 42 U.S.C. § 1983**

I. 42 U.S.C. § 1983

You may file an action under 42 U.S.C. § 1983 to challenge federal constitutional or statutory violations by state actors which affect the conditions of your confinement.

A § 1983 action may not be used to challenge the length of your sentence or the validity of your conviction. Such claims must be addressed in a petition for a writ of habeas corpus, on the correct forms provided by the clerk of the court.

II. Filing a § 1983 Action

To file a § 1983 action, you must submit: (1) an original complaint and (2) a check or money order for \$150.00 or an original Prisoner's In Forma Pauperis Application.

This packet includes a complaint form and a Prisoner's In Forma Pauperis Application. When these forms are fully completed, mail the originals to: Clerk of the United States District Court for the Northern District of California, 450 Golden Gate Avenue, Box 36060, San Francisco, CA 94102.

III. Filing Fees

Under the Federal Courts Improvement Act of 1996, the filing fee for a § 1983 action filed on or after December 18, 1996 has been increased to \$150.00 from \$120.00, to be paid at the time of filing. If you are unable to pay the full filing fee at this time, you may petition the court to proceed in forma pauperis, using the Prisoner's In Forma Pauperis Application in this packet. You must fully complete the application and sign and declare under penalty of perjury that the facts stated therein are true and correct.

Each plaintiff must submit his or her own Prisoner's In Forma Pauperis Application. You must use the Prisoner's In Forma Pauperis Application provided with this packet and not any other version.

IV. Complaint Form

You must complete the entire complaint form. Your responses must be typewritten or legibly handwritten and you must sign and declare under penalty of perjury that the facts stated in the complaint are true and correct. Each plaintiff must sign the complaint.

III. Filing Fees

In order for the petition to be filed, it must be accompanied by the filing fee of \$5.00. If you are unable to pay the filing fee, you may petition the court to proceed in forma pauperis. A Prisoner's Application to Proceed In Forma Pauperis form for this purpose is included in this packet. You must complete the application, sign it and declare under penalty of perjury that the facts stated therein are correct. File the application with your petition and keep a copy for your records.

IV. Petition Form

Your petition must be legibly handwritten or typewritten, and you must sign it and declare under penalty of perjury that the facts stated in it are correct. Read the entire petition form before answering any questions. You will note that brief explanatory comments appear throughout the form. Read these carefully before you answer the questions because they are intended to help you fill out the petition as well as ensure that you file your petition in the proper court.

Complete all applicable questions in the proper blank spaces. If you need additional space to answer a question, you may attach additional blank pages. Make clear the question to which any such continued answer refers.

Only one sentence or conviction may be challenged in a single petition. If you challenge more than one, you must do so by separate petitions.

V. After Petition Is Filed

You will be notified as soon as the court issues an order. It is your responsibility to keep the court informed of any changes of address to ensure that you receive court orders. Failure to do so may render in dismissal of your suit.

VI. Inquiries And Copying Requests

Because of the large volume of cases filed by inmates in this court and limited court resources, the court will not answer inquiries concerning the status of your case or provide copies of documents, except at a charge of fifty cents (\$0.50) per page. You must therefore keep copies of all documents submitted to the court for your own records.

COMPLAINT BY A PRISONER UNDER THE CIVIL RIGHTS ACT, 42 U.S.C. § 1983

Name _____ (Last) _____ (First) _____ (Initial)

Prisoner Number _____

Institutional Address

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

(Enter the full name of the plaintiff in this action)

Case No. _____
(To be provided by the clerk
of court)

vs.

COMPLAINT UNDER THE CIVIL
RIGHTS ACT, 42 U.S.C § 1983

(Enter the full name of the defendant(s) in this action)

All questions on this complaint form must be answered in order for your action to proceed.

I. Exhaustion of Administrative Remedies

Note: You must exhaust your administrative remedies before your claim can go forward. The court will dismiss any unexhausted claims.

A. Place of present confinement

B. Is there a grievance procedure in this institution?

YES () NO ()

C. Did you present the facts in your complaint for review?

through the grievance

C. Did you present the facts in your complaint for review through the grievance procedure? YES() NO ()

Who to Name as Respondent

You must name the person in whose actual custody you are. This usually means the Warden or jailor. Do not name the State of California, a city, a county or the superior court of the county in which you are imprisoned or by whom you were convicted and sentenced. These are not proper respondents.

If you are not presently in custody pursuant to the state judgment against which you seek relief but may be subject to such custody in the future (e.g., detainees), you must name the person in whose custody you are now and the Attorney General of the state in which the judgment you seek to attack was entered.

A. INFORMATION ABOUT YOUR CONVICTION AND SENTENCE

1. What sentence are you challenging in this petition?

(a) Name and location of court that imposed sentence (for example; Alameda County Superior Court, Oakland):

Court	Location
(b) Case number, if known	_____
(c) Date and terms of sentence	_____
(d) Are you now in custody serving this term? (Custody means being in jail, on parole or probation, etc.) Yes _____ No _____	
Where? _____	(Name of Institution) _____ (Address) _____

2. For what crime were you given this sentence? (If your petition challenges a sentence for more than one crime, list each crime separately using Penal Code numbers if known. If you are challenging more than one sentence, you should file a different petition for each sentence.)

3. Did you have any of the following?

Arraignment: Yes _____ No _____ Preliminary Hearing: Yes _____ No _____

Motion to Suppress: Yes _____ No _____

4. How did you plead?

Guilty Not Guilty Nolo Contendere

Any other plea (specify) _____

5. If you went to trial, what kind of trial did you have?

Jury Judge alone Judge alone on a transcript 6. Did you testify at your trial? Yes No

7. Did you have an attorney at the following proceedings:

- (a) Arraignment Yes No
- (b) Preliminary hearing Yes No
- (c) Time of plea Yes No
- (d) Trial Yes No
- (e) Sentencing Yes No
- (f) Appeal Yes No
- (g) Other post-conviction proceeding Yes No

8. Did you appeal your conviction? Yes No

(a) If you did, to what court(s) did you appeal?

Court of Appeal	Yes <input type="checkbox"/>	No <input type="checkbox"/>	(Year) _____	(Result) _____
Supreme Court of California	Yes <input type="checkbox"/>	No <input type="checkbox"/>	(Year) _____	(Result) _____
Any other court	Yes <input type="checkbox"/>	No <input type="checkbox"/>	(Year) _____	(Result) _____

(b) If you appealed, were the grounds the same as those that you are raising in this petition? Yes No (c) Was there an opinion? Yes No (d) Did you seek permission to file a late appeal under Rule 31(a)? Yes No

If you did, give the name of the court and the result:

9. Other than appeals, have you previously filed any petitions, applications or motions with respect to this conviction in any court, state or federal? Yes No

Note: If you previously filed a petition for a writ of habeas corpus in federal court that challenged the same conviction you are challenging now and if that petition was denied or dismissed with prejudice, you must first file a motion in the United States Court of Appeals for the Ninth Circuit for an order authorizing the district court to consider this petition. You may not file a second or subsequent federal habeas petition without first obtaining such an order from the Ninth Circuit. 28 U.S.C. § 2244(b).

(a) If you sought relief in any proceeding other than an appeal, answer the following questions for each proceeding. Attach extra paper if you need more space.

I. Name of Court _____

Type of Proceeding _____

Grounds raised (Be brief but specific):

a. _____

b. _____

c. _____

d. _____

Result _____ Date of Result _____

II. Name of Court _____

Type of Proceeding _____

Grounds raised (Be brief but specific):

a. _____

b. _____

c. _____

d. _____

Result _____ Date of Result _____

III. Name of Court _____

Type of Proceeding _____

Grounds raised (Be brief but specific):

a. _____

b. _____
c. _____
d. _____

Result _____ Date of Result _____
(b) Is any petition, appeal or other post-conviction
proceeding now pending in any court? Yes _____ No _____

(Name and location of court)

B. GROUNDS FOR RELIEF

State briefly every reason that you believe you are being confined unlawfully. Give facts to support each claim. For example, what legal right or privilege were you denied? What happened? Who made the error? Avoid legal arguments with numerous case citations. Attach extra paper if you need more space. Answer the same questions for each claim.

Note: You must present ALL your claims in your first federal habeas petition. Subsequent petitions may be dismissed without review on the merits. 28 U.S.C. § 2244(b); McCleskey v. Zant, 499 U.S. 467, 111 S. Ct. 1454, 113 L. Ed. 2d 517 (1991).

Claim One: _____

Supporting Facts: _____

Claim Two: _____

Supporting Facts: _____

Supporting Facts: _____

If any of these grounds was not previously presented to any other court, state briefly which grounds were not presented and why:

List, by name and citation only, any cases that you think are close factually to yours so that they are an example of the error you believe occurred in your case. Do not discuss the holding or reasoning of these cases:

Do you have an attorney for this petition? Yes ____ No ____
If you do, give the name and address of your attorney:

WHEREFORE, petitioner prays that the Court grant petitioner relief to which s/he may be entitled in this proceeding. I verify under penalty of perjury that the foregoing is true and correct.

Executed on _____
Date _____

Signature of Petitioner

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

) CASE NO:

) PROOF OF SERVICE

))))))

I, the undersigned, hereby certify that I am over the age of eighteen (18) years, and not a party to the above-entitled action. On _____, 19____, I served a copy of: _____

by placing said copy in a postage paid envelope, fully sealed, addressed to the party(ies) hereinafter listed, by depositing said envelope in the United States Mail:

1.

2.

3.

4.

I declare under penalty of perjury that the foregoing is true and correct.

Signature

Typed Name

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Victor Daniel Soltoro

Plaintiff,
)
)
)
v.
)
)
)
)
)
)

CASE NO: C-07-4256-PJH(PR)
PROOF OF SERVICE

JOE McGrath et al.
)

I, the undersigned, hereby certify that I am over the age of eighteen (18) years, and not a party to the above-entitled action. On March 15, 2008, I served a copy of: Request for 42 USC 1983 form and instructions.

by placing said copy in a postage paid envelope, fully sealed, addressed to the party(ies) hereinafter listed, by depositing said envelope in the United States Mail:

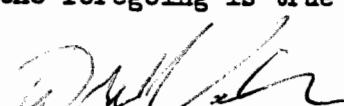
1. Office of the Clerk, US District Court
NORTHERN DISTRICT OF CALIFORNIA
450 Golden Gate Avenue
San Francisco, CA 94102

2.

3.

4.

I declare under penalty of perjury that the foregoing is true and correct.


Signature

D.W. Vaeth
Typed Name